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May 7, 2007

Docket No. 06-181

VIA HAND DELIVERY

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

FILED/ACCEPTED

MAY - 7 2007

Federal Communications Commission
Office of the Secretary

In re: *Closed Captioning and Video Description & Video Programming -
Implementation & Section 305 of the Telecommunications Act of 1996
Video Programming Accessibility*

CGB-CC-0366 - Reply in Support of Petition for Exemption from Closed
Captioning Requirements - - Frazer Memorial Methodist Church

Dear Ms. Dortch:

Frazer Memorial Methodist Church ("Frazer"), by its counsel, hereby responds to the Opposition to its Petition for Exemption from the Commission's closed captioning rules filed by Telecommunications for the Deaf and Hard of Hearing, Inc., National Association for the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, Association of Late-Deafened Adults, Inc., American Association of People with Difficulties and California Coalition of Agencies Serving the Deaf and Hard of Hearing (the "Commeuters") in the above-referenced proceeding. In support of its position, Frazer submits the following.

On December 30, 2005 Frazer requested an exemption from the Commission's closed captioning rules with respect to the broadcast of its Sunday Morning Worship Services on Station WSFA(TV), Montgomery, Alabama. On September 22, 2006, the Commission ruled in favor of Frazer and issued a letter order granting its exemption petition. Subsequently, several advocacy groups sought review of the Commission action. On November 7, 2006, the Commission issued a

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Public Notice noting the filing of the application for review and seeking comment on 494 petitions for exemption, including the one filed by Frazer. Oppositions were due to be filed no later than November 27, 2006, however, a coalition of advocacy groups requested and were granted a 120 day extension of time to file oppositions. On March 2, 2007 Commenters filed their Opposition to the Frazer Petition for Exemption. Commenters appear to have filed Opposition to virtually all if not all of the 494 petitions for exemption listed in the Commission's November 7, 2006 Public Notice.

As earlier noted by several petitioners in this proceeding, Commenters are not interested persons within the meaning of the FCC's rules and the Administrative Procedure Act' and, accordingly, do not have standing to participate in this proceeding. Section 79.1(f)(6) of the Commission's rules provides that any interested person may file comments or oppositions to the petition for exemption. Commenters fail to allege that the Commission's grant of the Frazer Petition would in any way injure them or any of their members. Moreover, they do not claim that any their members regularly watch the Sunday Morning Worship Services on Station WSFA(TV). Thus, Commenters have not shown how the Commission's approval of the Frazer Petition for Exemption would cause them or their members harm. Without a showing of injury-in-fact, Commenters cannot be considered "interested persons" and, therefore, do not have standing to participate.

The Court has held that the injury-in-fact rule for standing covers the "interested person" language of the Administrative Procedure Act.² Associations, such as Commenters, have standing to sue on behalf of their members only if (1) at least one of the members would have standing to sue in his or her own right, (2) the interest the association seeks to protect is germane to its purpose, and (3) neither the claim asserted nor the relief requested requires that an individual member participate in the lawsuit. *Hunt v. Washington State Adver. Commission*, 432 U.S. 333, 343(1977). In this case, Commenters have not shown that they or any of their members will be injured by Frazer receiving an exemption, much less that such an injury was caused by the challenged conduct and would be likely redressed by a favorable decision have. Commenters have not demonstrated that any of their members reside in the service area of Station WSFA(TV) or that they have ever viewed the Sunday Morning Worship Services on that station. They have failed to provide a statement of a single member claiming to be aggrieved or adversely affected by the Commission grant of Frazer's Petition for Exemption of the Commission's closed captioning rules. As such, Commenters lack standing to oppose that Petition for Exemption and their Opposition should be summarily dismissed.

In enacting Section 713 the Commissions Act of 1934, as amended, Congress recognized that, in certain situations, the costs of captioning might impose an "undue burden" on video programming providers or owners, and, it, therefore, authorized the Commission to adopt appropriate exemptions.³ Congress defined "undue burden" to mean "significant difficulty or expense." In determining whether close captioning requirements would impose an undue economical burden, the factors to be considered were (1) the nature and costs of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the

¹ 5 U.S.C.A. Section 555(b).

² *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); *Trustees for Alaska v. EPA*, 749F.2d 549, 554(9th Cir. 1984)

³ 47 U.S.C. Section 613(e).

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financial resources of its provider or program owner; and (4) the type of operations of the provider or program owner.⁴

As noted previously in its December 30, 2005 Petition for Exemption, Frazer Memorial Methodist Church is a United Methodist Church located in Montgomery, Alabama. Significant to the growth of the Church has been its Sunday Morning Worship Services, which are broadcast live at 9:30 a.m. on Sundays by Station WSFA(TV), Montgomery, Alabama. The services are one hour in duration and are produced by a limited volunteer church staff. The services are viewed by persons of all ages who are unable to attend Services in person.

Since the Churches Sunday Morning Worship Services have been broadcast they have gained numerous followers. There are countless disabled people who cannot leave their homes to attend church and the Sunday Morning Worship Services is the only church that these people are able to experience. While Frazer is sympathetic to the needs of the hearing impaired, it must also be concerned about the numerous individuals who are not sufficiently mobile to travel to a church service and whose needs would go unfulfilled if Frazer has to terminate the broadcast of its Sunday Morning Worship Services because of the burdensome costs attributed to closed captioning.

Frazer reaffirms that it does not have the financial resources to support close captioning of its Sunday Morning Worship Services and that mandated compliance with the Commission close captioning rules would impose an undue burden on it. Frazer previously provided an accurate estimate of what it would cost to close caption its Sunday Morning Worship Services. Because of the nature of the programming, while it would be less expensive to contract to have closed captioning provided on a delayed basis, such a delay would destroy the immediacy of the broadcast of church services.

Frazier operates as a tax-exempt and non-private organization depending solely on contributions from members of the church. Therefore, it is not in a position of being able to pass on the cost of closed captioning to advertisers. Its church services have no commercial purpose. The additional expense involved in providing closed captioning would substantially adversely impact other areas of church service provided to its membership as well as the Church's ability to perform charitable activities to the detriment of the local community as well as its membership. Any funds required to pay for closed captioning would have to be taken out of other areas. That means that for every dollar spent on close captioning, some other area of Frazer's operations would be adversely affected.

Frazer has requested that Station WSFA, as distributor of the Sunday Morning Worship Services, assume the expense of captioning, however, the station has declined to cover the closed captioning expense.

Frazer also believes that the local, non-news exemption to the Commission's close captioning rules also applies to its Sunday Morning Worship Services. The program is produced and distributed locally and is not networked outside of the local Montgomery service area. The programming is local in the same manner that a local parade or a community theater production is local. The services are produced on a low budget basis and are presented essentially as a "public

⁴ *Id.* See also 47 C.F.R. Section 79.1(f)

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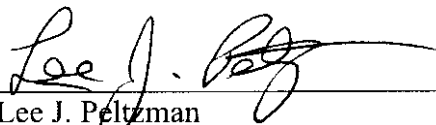
service”, especially to the aged, physically handicapped and other shut-ins who are unable to attend religious services in person. The programming does not constitute news, has no repeat value and the electronic newsroom technique is not available.

Accordingly, for the foregoing reasons, Frazer requests that the Commission grant Frazer an exemption from its closed captioning rules for the broadcast of Frazer’s Sunday Morning Worship Services. However, it should be noted that the Commission September 22, 2006 grant of the Frazer Petition for Exemption was premised on the Commission’s decision in *Anglers for Christ Ministries, Inc., New Beginning Ministries, Video Programming Accessibility Petitions for Exemption from Closed Captioning Requirements*, 21 FCC Rcd 10094 (2006) (“*Anglers Exemption Order*”). Commenters have sought review of the *Anglers Exemption Order*. Accordingly, in the event the Commission reconsiders its decision in *Anglers Exemption Order* and does not reaffirm its grant of the Frazer Petition for Exemption, Frazer requests that the Commission follow the recommendation set forth by Commenters’ that petitioners be given 180 days from the release date of any Commission action either to comply with the closed captioning rules or to reapply with sufficient information to permit the Commission to ascertain whether petitioner’s request meets the legal standard for granting an exemption of the Commission closed captioning rules.

In sum, Commenters lack standing to oppose Frazer’s Petition for Exemption. Moreover, Commenters’ boilerplate Opposition would render Frazer’s broadcast of its Sunday Morning Worship Services a nullity and disserves the public interest. That opposition should be denied.

Respectfully submitted,

FRAZER MEMORIAL METHODIST CHURCH

By: 
Lee J. Peltzman
Its Attorney

Dated: May 7, 2007

⁵ Commenters Opposition, filed March 2, 2007 at p.2

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CERTIFICATE OF SERVICE

I, Rasheema Smith, certify that on this 7th day of May, 2007, I caused to be sent by U.S. Mail, postage prepaid, copies of the foregoing Reply in Support of Petition for Exemption from Closed Captioning Requirements to the following:

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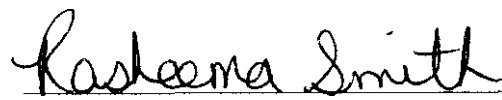
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